

*of the authors and friends*

*Item 3*

THE

# LEGAL DOCTRINE OF RESPONSIBILITY,

IN

## RELATION TO INSANITY.

*(A Paper read at the Annual Meeting of the National Association for the Promotion  
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BY

S. W. NORTH, M.R.C.S.



*The Legal Doctrine of Responsibility, in relation to Insanity.*

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FOR my presence in this Department as the author of a paper, I feel that some apology is necessary, seeing that it may well be asked, How can one whose business it is to treat disease know anything of law, or afford any assistance towards the elucidation of its difficulties?

My answer and my apology is, that for the equitable administration of the law, whether civil or criminal, it is not only desirable but necessary that due weight should be given to the teachings of science and those reasonable conclusions, the result of experience, which, though wanting the force of scientific demonstration, are nevertheless, even in the important affairs of life, often the sole data on which we have to rely in selecting any given course of action.

The practice of medicine presents a wide field and frequent opportunities for observing the infirmities of our nature, the influence of which in determining the criminality or otherwise of any given act the law with equal wisdom and humanity does not overlook.

Whether an act be right or wrong is not to be determined by the act itself (for under altered circumstances a similar act may be both), but rather by the motives which led to it, and the conditions under which it was performed ; these determine its ethical relations, and the amount of responsibility attached to the agent. It is therefore of paramount importance in every inquiry to ascertain as far as possible not only the motives which led to any particular act, but also the conditions under which those motives came into existence, in order that it may be known to what extent the individual was at the time a free agent, and if he were not to discover the nature of the power by which he was constrained, and the limits of its influence. There can be neither vice nor virtue without freedom of action, the smallest diminution of which necessarily modifies not only the social and moral relations of any given act but the responsibility of the actor.

What then are the conditions under which an individual may cease to be a free agent ? They are various both in kind and degree. First, we have all those restrictions which arise in consequence of the natural limitation of human power, the coercion of others and the necessities of time and place, the individual being at the time of sound mind. Secondly, those causes which arise within, and are peculiar to the individual ; of these by far the most important, and that with which alone we have to deal to-day is unsoundness of mind ; to the nature of which and the limitations it imposes on human action,

and therefore on responsibility before the law, I wish to direct your attention. And here I think the profession to which I belong may claim to be heard, not on questions of law, but on questions of health; not on the legal relation of any transaction, for that has already been determined by the legislature, but on the mental and physical condition of the individual at the time, and the relation of the act to those conditions. The point for the medical examiner to determine is not whether the transaction to be inquired into took place, or if it did, whether it was illegal; but what was the state of mind of the person at the time ; was he sane or insane, and what relation existed between the act and his mental condition.

That which is true of the ethical relations of our acts is equally so of their psychological ; the thing done affords no proof in itself, either of the nature or the quality of the mental operation which led to it, and therefore affords no proof either of the moral or mental condition of the actor. Again, the proof that the act itself was criminal or illegal, is no proof of the responsibility of the agent, for I take it, any dogma of the law to the contrary notwithstanding, that, if punishment is with justice to be inflicted, the person punished must, at the time of his offence, not only have known that his act was illegal, but must have been in possession of the power to act or to abstain. If the law recognises as a legitimate defence that an act in itself illegal was done under the coercion of others, it ought with equal justice not to overlook that coercion, which, though arising within the individual, and therefore not so patent to our understanding as that from without, does nevertheless according to the observation and experience of all who have had opportunities of making themselves familiar with the phenomena of mental disease, frequently hurry its victim into the commission of every species of crime and depravity with a power far more irresistible than anything which can spring from the influence of others.

The law is not, neither does it claim to be infallible, the highest encomium that can be pronounced upon it at any period of our history is, that at the time it reflected the wisdom and the knowledge of the age; this being so, it is obvious that its maxims must vary as the social state may require, or the results of scientific observation and research demand. Opinions which at one period might be said fairly to represent the knowledge of the time, and to be in unison with the science and experience of the day, at another may fail to reflect either the one or the other. Whenever this is the case, whenever the exposition of the law is at variance with the teachings of science, or the settled conviction resulting from observation and experience, so surely is an element of doubt and uncertainty introduced into the administration of justice, prejudicial to the best interests of society, dangerous to public morals, and inimical to the sacred character of those solemn declarations under the sanction of which the law is administered.

In this unsatisfactory condition I believe the law to be at the present time in reference to the question of responsibility when

'unsoñndness of mind is urged as a defence or pleaded in bar of punishment. Those qualities of mind, the possession of which is held as sufficient to constitute responsibility before the law, and therefore liability to punishment, are well-known by almost every physician of experience to be possessed to a greater or less extent by the majority of those whose insanity is beyond all doubt, and who ought not on any principle of justice to be held accountable for their actions, whatever the law may say to the contrary. This being so it ceases to be a matter of surprise that conflicts of opinion between medical witnesses and the court in cases where the question of responsibility arises, should be the rule rather than the exception, and that as a consequence, a grave element of uncertainty should be introduced into the result of these inquiries, especially in capital cases. Juries alive to the solemn responsibilities of their position will listen and give effect by their verdicts to the opinions of men whose experience ought to give them weight, despite the firm and emphatic enunciation of any legal dogma from the bench to the contrary. Even judges might be named, who, after denouncing, with all the weight of their authority the so-called visionary theories of mad-doctors, after warning juries in the most solemn manner to beware how they listen to doctrines so fraught with danger to the public peace, so subversive of all distinctions between vice and disease, have in the secret retirement of their own chambers, when freed from the trammels imposed by the technicalities of the law, listened to the sober voice of reason, and by their acts given the sanction of their approval to opinions, against which only a few hours before they had arrayed the authority of all the judges who in times gone by adorned the bench. That great discrepancies do exist between the opinions of medical and legal authorities on the question of responsibility where insanity is pleaded, and that as a consequence the verdicts of juries, especially in capital offences, are daily becoming more uncertain, are facts within the knowledge of all; indeed, to such an extent is the conviction of the uncertainty arising from this cause gaining ground, that the Society for the Abolition of Capital Punishment urges it as one reason why their views should be adopted by the legislature. This being so, it is of importance to the well-being of society and necessary for the equitable administration of justice, that, if possible these differences of opinion should be reconciled, and that when speaking on the abstract question of what constitutes insanity and a just ground of exculpation the court and the witness should have some common basis of agreement, otherwise it is impossible to arrive at the truth; without this the most solemn inquiry must of necessity frequently diverge widely from its object, and too often end in little else than a trial of strength between counsel and witness; if it do not, as I have on more than one occasion witnessed, end in something very like an investigation into the sanity of the witness.

Wherein lies the source of this difference of opinion; how has it come to pass that in scarcely a single instance is there a perfect

agreement between the medical expert and the court when the sanity of an individual is in question? The cause of this difference, and the source of nearly all the difficulties with which every investigation is beset, especially in criminal cases, lies in the fact that the legal definition of insanity in its relation to responsibility, as set forth by the authority of the judges, is at variance with the knowledge and experience of the age, at least of those persons whose opportunity and attainments entitle their opinion to respect. In spite of this difference of opinion, judges continue with an almost wearisome iteration to repeat the opinions of their predecessors, and to direct juries that, "Notwithstanding a party accused did an act, which was in itself criminal, under the influence of insane delusions, with a view of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable if he knew at the time that he was acting contrary to law. That if the accused was conscious that the act was one which he ought not to do; and if the act was at the same time contrary to law, he is punishable. To establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or as not to know that what he was doing was wrong. That a party labouring under a partial delusion must be considered in the same situation, as to responsibility, as if the facts, in respect to which the delusion exists, were real."\*

Such is the exposition of responsibility in relation to insanity laid down by the judges; upon this view every jury empanelled to try the question, has been instructed since 1843. In August of that year, in the case of the *Queen v. Higginson* for murder, where the accused was undoubtedly imbecile, as deposed to by the officers and surgeon of the prison, Mr. Justice Maule instructed the jury,—"If you are satisfied that the prisoner committed this offence, but you are also satisfied by the evidence that, at the time of committing the offence, the prisoner was so insane that he did not know right from wrong, he should be acquitted on that ground; but if you think that, at the time of the committing of the offence, he did know right from wrong, he is responsible for his acts, although he is of weak intellect."† He was executed. He, whom an All-wise Providence had seen fit in His wisdom to afflict with an imbecility so great that jailors and attendants of the prison found no difficulty in testifying to it, was publicly executed, to satisfy a dogma of the law which has little or no foundation in fact.

Far wiser and based on a deeper insight into the difficulties of the inquiry was the answer of the same learned judge to the questions propounded by the House of Lords in the case of *Regina v. McNaughten*, when he said, "I feel great difficulty in answering

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\* Clark and Finnelly's Reports, Vol. X., p. 200.

† Carrington and Kirwan's Reports, Vol. I., p. 130.

the questions put by your lordships on this occasion. First, because they do not appear to arise out of, and are not put with reference to, a particular case, or for a particular purpose, which might explain or limit the generality of their terms, so that full answers to them ought to be applicable to every possible state of facts not inconsistent with those assumed in the questions ; this difficulty is the greater, from the practical experience both of the Bar and the Court being confined to questions arising out of the facts of particular cases : secondly, because I have heard no argument at your lordships' bar or elsewhere on the subject of these questions, the want of which I feel the more the greater is the number and extent of questions which might be raised in argument ; and, thirdly, from a fear, of which I cannot divest myself, that as these questions relate to matters of criminal law of great importance and frequent occurrence, the answers to them by the judges may embarrass the administration of justice when they are cited in criminal trials.”\*

It would have been well for the cause of humanity and favourable to the development of sounder views on this difficult question, had the doubts entertained by Mr. Justice Maule been shared by his colleagues, and led them to hesitate before they attempted a dogmatic exposition of the nature and character of the mental elements which constitute responsibility, thereby placing an effectual bar to that slow but steady advance in opinion whereby the maxims of the law on questions of this nature may be kept in unison with the progress of scientific observation and experience.

That which was sought when the collective opinion of the judges was asked has certainly been attained ; judges do now expound the legal doctrine of responsibility with more uniformity than was done in former times ; but so far from this being followed by greater uniformity in the verdicts of juries, the reverse has taken place ; too frequently the conclusions at which they arrive where the question of responsibility is at issue are at variance with both the law and the evidence, and thus a painful uncertainty falls on the administration of justice in one of its most solemn aspects ; mainly I believe because the law is at variance with the knowledge of the age, thus leaving juries to be swayed as their desire or inclination may suggest, by the opinion of witnesses or the dicta of the judge ; the teaching of the bench has ceased to be authoritative, because doubts are entertained as to its correctness.

“ To measure degrees of responsibility and adapt them to the variable conditions of disordered mind is a problem, upon the solution of which the whole medico-legal question of insanity rests. But how can responsibility be measured ? Extension in time and place can be measured by duration and by substance ; gravitation can be measured by weight, and power of various kinds by its effect on gravitation ; even colour and such like qualities can be measured by comparison with a standard : but in what practical balance shall

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\* Carrington and Kirwan's Reports, Vol. I., p. 131.

the responsibility of man for his actions be estimated ? As the weight of a body is measured by the power it overcomes, so degrees of responsibility must be measured by the degrees of mental disorder, and by the amount of inflection they produce from the standard of health.

"A man having the knowledge of right and wrong, and in the possession of the power of choosing the one and refusing the other, is rightly held to be responsible for his conduct to his God, to his neighbour, and to himself. A man knowing and capable of discharging his duties to his God, to his neighbour, and to himself, is a sane man. A man who from any mental imperfection or infirmity is incapable of discharging those duties cannot be considered to be in a state of mental sanity, and cannot with justice be held responsible to do that which he is morally unable to do.

"It will be hereafter seen, that the neglect of this distinction between knowledge and power forms one of the fundamental difficulties of the question." \*

Having thus indicated what the views of the law are on the question of responsibility in criminal cases—the substance of which seems to be this, that if a man knows the nature of the act he is doing, that is, knows what it is—knows, for example, that if he is cutting the throat of another man he is doing something which may cause his death—and if further he knows the act is contrary to the law of the land and if done will render him amenable to punishment, he is, in the eye of the law, responsible, and subject to the punishments imposed by the law upon wilful offenders—unless, it can be proved that at the time he laboured under such a delusion as would, had it been fact and not delusion, have excused the act. As, for example, if he were haunted with a delusion that the person he injured was about to kill him, or that he was a wild beast, then his act of murder might be excused because, had the delusion been a reality, he might, with success, have pleaded a justification for what he had done. If I understand the opinion of the judges on this point, as propounded in answer to the questions of the House of Lords—and in accordance with which every jury empanelled since that time to try a criminal case has been instructed where insanity was pleaded in defence—the excuse afforded by delusions only extends to the terms of the delusions, and no matter to what extent the accused may be the victim of delusions, he is not to be excused if his delusions, being facts, would not excuse him. The concentrated wisdom of the law on the subject of responsibility may be summed up thus :—That, juries are to be told that if the prisoner at the time of his act knew what he was doing, and knew that it was illegal, the only kind of wrong of which the law takes cognisance, he is to be held responsible, unless the form of his delusion is in strict accordance with what, for want of a better term, we may call legal excuse.

To both these points in the legal aspect of responsibility I wish to

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\* Bucknill's "Unsoundness of Mind, in Relation to Criminal Acts," p. 4.

direct the attention of the Department, my object being to prove, that a large proportion of insane persons who are by law confined in asylums, and therefore practically held by the law to be irresponsible for their acts—for I take it that if they have sufficient control over their conduct to render them responsible for their acts, they are improperly deprived of their liberty—do know right from wrong, do know that if they were to kill or injure another they would be liable to punishment; that others are the victims of delusions, the force of which deprives them of their moral liberty, renders them incapable of controlling their conduct, and prone to offences far beyond the term of their delusions, and therefore beyond the protection which the law affords to persons so afflicted. The whole doctrine of irresponsibility on the ground of insanity, as set forth from the bench, is I believe founded in error, is not supported by the experience of those conversant with the various phases of insanity, and would, if strictly acted upon, condemn to punishment nine-tenths of the lunatics who have had the misfortune to violate the law; such being the case, grave uncertainty is introduced into the administration of justice, and a tendency to lower the standard of respect for those solemn declarations under which it is administered.

Knowledge is not power, in the sense of giving its possessor control over his actions. If I were asked to name the faculty most frequently impaired in insanity, I should undoubtedly say the will, or that power by which we convert our thoughts into actions. Daily experience of mankind ought to satisfy the most superficial observer that will is not synonymous with knowledge; it must be patent to everyone, that apart from any question of vice or virtue, some men are weak, yielding readily to the temptations of circumstances, whilst others, from the mere force of their will, may be said scarcely ever to fall into temptation, and that nevertheless the virtuous knowledge and virtuous desires of the former may be of a far more exalted character than those of the latter. If this be true of sane men, how much more likely is it to be true of those, who, by reason of some disease of the mind have lost that faculty of co-ordination by which their thoughts are combined into regular and healthy operation. It would burthen my paper, and weary my hearers, were I to quote all the eminent medical authorities at my disposal on this point—let one be sufficient. At a meeting of the medical officers of asylums, held in July last, after discussion and deliberation, the following resolution was unanimously adopted:—"That so much of the legal test of the mental condition of an alleged criminal lunatic which renders him a responsible agent because he knows the difference between right and wrong, is inconsistent with the fact, well-known to every member of this meeting, that the power of distinguishing right and wrong exists frequently among those who are undoubtedly insane, and is often associated with dangerous and uncontrollable delusions." Were the fact of this being the experience of all alienist physicians in dispute, I

could quote the authority of men from every country in Europe in support of it; this is not necessary, I do not believe anyone will venture to question the fact. I cannot, however, forbear quoting the words of an eminent writer on this subject.

"It may also be asserted, as the result of observation and experience, that in all lunatics, and even in the most degraded idiots, whenever manifestations of any mental action can be educed, the feeling of right and wrong may be proved to exist. The education of idiots and *crétins* has proved that there is no zero in the human mind; and the success of the moral treatment prevailing in lunatic asylums has demonstrated that insanity does not neutralise the influences by which the moral government of the world is effected. But if insanity does not remove these innate principles, does it on that account leave persons under their influence wholly responsible for their actions? Certainly not. Responsibility depends upon power, not upon knowledge, still less upon feeling. A man is responsible to do that which he can do, not that which he feels or knows it right to do. If a man is reduced under thraldom to passion by disease of the brain, he loses moral freedom and responsibility, although his knowledge of right and wrong may remain intact."\* The whole error, and the secret of all the confusion that has arisen lies in the fact, that the doctrine of responsibility has been educed from a consideration of what holds good in a state of perfect sanity and integrity of the faculties, without any reference to, or observation of, the condition of insane persons in this particular. The opinion of the judges is doubtless a reflex of their own self-consciousness, but contains no element derived from observation of disease.

It now only remains for me to say a few words on the nature of insanity, and to seek therefrom on theoretical grounds to establish my conclusion that knowledge is a faculty apart from volition.

Of the nature of the thinking principle, that by which man becomes a moving power in the world, we know nothing beyond the fact that it is associated with a nervous system, upon the integrity of which it is dependent for its healthy manifestation. This nervous system we know to be compounded of various parts or centres, each having a distinct function, motion, sensation, perception, and that something we call reason. In a state of health these parts and their functions are all mutually associated, working together in the production of any act, and obeying that force which we call will. This intimate blending, intricate co-operation, and mutual dependency, which the various parts preserve towards one another, must be carefully distinguished from their integral unity; for although in a state of health they all co-operate in the production of the acts which characterise our daily life, it does not follow but that under altered circumstances they may become dissociated, separated from each other, and removed from the control of the will, thereby giving rise to the phenomena which are peculiarly characteristic of insanity. That this dissociation

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\* Bucknill's "Unsoundness of Mind in Relation to Criminal Acts," p. 59.

from the faculty of the will does take place as regards some of the functions of the nervous system—motion, for example—is a fact with which every medical practitioner is familiar. The various forms of convulsive disease remove from the control of the will, parts and actions which in a state of health are subservient to it ; what is true of one part may be true of another, though it may not be so patent to our observation. In insanity it is notorious that the faculties of attention and comparison are impaired, imparting to the mind of the sufferer a tendency to dwell on, or be influenced exclusively by, the impression of the moment, without any reference to its collateral relations ; in this way the will is enfeebled, and sensation may readily be converted into action without its intervention. This seems to be the condition of most insane persons whose insanity is characterised by a tendency to impulsive action ; there may be no impairment of knowledge, the act follows the sensation or idea just as convulsive action follows the irritation of a nervous centre—in the same way, ideas, sensations, or impressions become absolute ; the mind, so far as the particular idea, sensation, or impression is concerned, losing the power of preserving its collateral dependencies, is forced into subjection by it ; herein we have an explanation of the origin of the various forms of hallucination and illusion, and can understand why it is that they assume the mastery over their victim. The loss of the faculty of attention seems to depend on some altered condition in the nutrition of the brain, its nutrition is not uniform, and thus preponderance is given to the function of some parts over others. The recognised causes of insanity are such as are also well known to disturb the function of nutrition. Insanity as a disease, has its origin in some disturbance of the power by which the different elements of the mind are co-ordinated and reduced to the subjection of the will ; as a defect, as in idiocy and imbecility, it is due to a want of power, from defect of parts. Loss of power, I venture to say, is a more universal characteristic of insanity than loss of knowledge, and as such ought to receive due consideration from the law when the question of responsibility is at issue.

A word in reference to delusions and their relation to responsibility, will suffice for what I wish to say under this head. According to the opinion of the judges, delusions can only be pleaded as an excuse to the same extent that the term of the delusions could be if they were facts and not delusions. A man may lawfully kill another for the preservation of his own life, he may be excused on the plea of insane delusion, if he kill another under the delusion that his life is in danger from the individual he slays, but he cannot be excused on the plea of insanity if his act exceeds that which would be lawful were his delusion fact. From this I infer that the law does not regard the presence of delusions as an indication of general insanity, but rather as errors of opinion, having no influence beyond the immediate point to which they refer ; forgetting, that in a healthy mind even erroneous opinions exercise an influence over a man's general conduct and judgment beyond the facts of the case in question ;

and still further unmindful of the fact that if the mind be so impaired that a man cannot correct his delusion, but surrenders his freedom of action to its influence, he is not likely, accurately, and with due reference to the maxims of the law, to measure the amount of his violence towards the person he insanely believes about to injure or insult him ; the notion that responsibility can be measured by the terms of a delusion is founded in error. The presence of delusion indicates a mind shaken in every part, like a building tottering to its foundation, no one can say what moment may see it involved in hopeless ruin. The very case on which the whole question arises, is a notable example of an insane act, far exceeding that which was lawful according to the terms of the delusion, committed by a man who at the time had doubtless a clear understanding both of the nature and quality of the act, and of its criminality before the law ; influenced by his delusion he became for the time both the lawgiver and the executioner of its sentence. So it is with all insane persons, especially those afflicted with delusions ; they are, whilst under their influence, a law unto themselves ; reason has lost her empire, the power of the will has become feeble or destroyed, and the faculties of the man, powerful for good or evil, freed from the restraint of reason and will, become obedient to the whim or caprice of the moment. Passion, that master-spirit, so difficult to control when the powers of the mind are intact, assumes the reins, and drives the victim of disease into every act of vice and extravagance which the feeling of the moment may suggest. The most difficult cases to deal with, both in civil and criminal courts, are undoubtedly those where the mental unsoundness is due to defect rather than disease, where the mental powers are feeble,—especially those which enable a man to govern his conduct under the stimulus of excitement or passion ; in the majority of these cases, the animal instincts and propensities remain intact, whilst the reasoning and governing powers are enfeebled or lost.

“ In hospitals for the insane,” \* says Georget, “ there is always a certain number of imbeciles who do the coarser work of the house, or serve as domestics and assistants to the regular officers. They become sufficiently intelligent at last to perform their duties well, to sweep the courts, carry burdens, move machines, execute simple commissions, and know the use of money to procure various enjoyments. But they have no idea, or a very imperfect one, of society, laws, morality, courts and trials ; and although they may have the idea of property, they have no conception of the consequence of theft. They may have been taught to refrain from injuring others, but they are ignorant of what would be done to them if guilty of incendiarism or murder. Their conduct is actuated solely by the fear of punishment, when capable of expressing this sentiment, and by their own desires.

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\* Ray’s “ Medical Jurisprudence of Insanity,” p. 79.

"Among the lower orders of society are many imbeciles, a little more intelligent than these, and not considered as utterly devoid of understanding, who, nevertheless, have but vague and imperfect notions of social duties and of justice. They engage in occupations that require no great extent of intellect, and even in the simplest of the mechanic arts. If they do not pass among their acquaintances for imbeciles, they are at least regarded as singular beings, with feeble understandings, and are teased and tormented in innumerable ways. Many of them indulge in drinking, and become lazy, drunken, and dissipated. They steal adroitly, and hence are considered as very intelligent; they recommence their offences the moment they are released from confinement, and thus are believed to be obstinately perverse; they are violent and passionate, and the slightest motive is sufficient to plunge them into deeds of violence or murder."

Having lost the moral sentiments and the controlling power of the will, they are little better than animals, and more dangerous, because their powers are greater. It seems to be a law of our organisation, and worthy of attention in these cases, that wherever arrests of development take place, the faculties peculiarly human—reason and the moral sense—are the first to suffer, whilst the animal passions, and that cunning necessary for their manifestation, which some mistake for reason, frequently remain intact. Many of the cases spoken of in courts of law as cases of impulsive insanity, moral insanity, homicidal mania, and instinctive madness, belong to this group. Moral sense, reason, and the will, being defective, appetite, and the passion of the moment, become the ruling powers over the individual.

Having thus at considerable length discussed the legal doctrine of responsibility in relation to unsoundness of mind, it only remains for me very briefly to attempt an answer to the question before the Department: "How should the law deal with questions of mental competency in civil and criminal cases respectively?"

First then as regards criminal cases:—The theory of the law in reference to responsibility should be brought more into unison with the teachings of experience; for if it be a fact that in the insane knowledge is not equivalent to power, or freedom of action, juries ought no longer to be told that it is. The letter of the law ought to be in harmony with the principles of justice, which it cannot be so long as any of its rules are contrary to facts; the law cannot ignore facts, however repugnant to popular prejudice they may be. So long as the dogma of the law as to what constitutes responsibility is retained in its present form, so long will witnesses continue to be examined on a false basis, and as a consequence, frequent absurdity, if not injustice, result.

If for healthy action it be necessary that the mind should be sound in all its parts, if delusions are an indication of diseased mind, then it is dangerous,—and as a matter of experience frequently most unjust—to say, that the existence of a delusion can be held as an excuse for crime no further than the terms of the delusion would

have been held as an excuse had they been true. Delusions are ever an indication of a mind shaken to its foundation ; no one familiar with their influence on the insane would undertake to measure the extent of extravagance to which they might lead ; acts apparently but little connected with the particular false impression, and generally far beyond the influence which ought to belong to it if true, frequently result from the influence of delusions.

The mind of man is a unity possessed of various qualities or attributes, these qualities or attributes being manifested through the brain, and being dependent on its integrity for their normal development. The particular part or function impaired may give prominence as it were to the insanity, but the whole suffers to a greater or less extent with the part ; herein lies the danger of attempting too nicely to estimate the influence of morbid conditions on the conduct of the individual ; the harmonious action of the various faculties of the mind is disturbed, the balance of power is lost, the directing force of the will is impaired, and the sufferer becomes the victim of every caprice of fancy, or of every gust of passion.

The law ought not to attempt to despise the conclusions arrived at by men of experience and observation. In determining questions of responsibility it cannot aim at certainty, for no power but that of Him who made the mind, can weigh with accuracy all the varied influences which disturb its freedom ; it ought therefore to listen with respect to the knowledge of the age, and take counsel therefrom ; that all men may feel if error arise, as arise it must, it is the error of human fallibility, and not wilful blindness.

"Insanity is a disease, and as is the case with all other diseases, the fact of its existence is never established by a single diagnostic symptom, but by the whole body of symptoms, no particular one of which is present in every case. To distinguish the manifestations of health from those of disease requires the exercise of learning and judgment ; if no one doubts this proposition, when stated in reference to the bowels, the lungs, or the heart, what sufficient or even plausible reason is there, why it should be doubted when predicated of the brain ? No reasonable person would desire to set up an insuperable barrier between the domain of professional knowledge, and that of common sense and common information ; but it is not too much to insist, that facts, established by men of undoubted competence and good faith, should be rejected for better reasons than the charge of 'groundless theory.' "\*

The mode in which the testimony of experts is obtained in these cases is, I venture to say, most unsafe, and prejudicial to the interests of justice and truth. I think all evidence of this kind should, in the first instance, be tendered as advice to the court, subject to cross-examination by either side, both as to facts and the conclusions drawn from them. Under the present system I have no hesitation in saying that it depends more on the skill of the witness,

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\* Ray's "Medical Jurisprudence of Insanity."

and his power to baffle the dexterity of counsel, than upon the justice of the case, whether an acquittal shall be the result or not ; an adroit witness who will adapt his language to the dogma of the law, and who will refuse to answer in detail, thereby defeating the desire of counsel to fritter his testimony away, will secure an acquittal upon far weaker grounds than a more able man may do who is less skilled in the method of evidence. This is not what it ought to be; the aim of the law is the attainment of truth and justice, so far as human wisdom can accomplish it ; these ought not to suffer by the inability of a witness to cope with the skill of counsel—rigid cross-examination invariably ends in the establishment of the truth or falsehood of evidence, as regards simple facts, in matters of opinion it too frequently defeats the ends of justice.

In civil cases the same principle of investigation ought to be adopted. The evidence of experts as to the sanity or otherwise of any party to a suit, should be taken as advice to the court, and not, as under the present system, it too frequently is, simply the opinion of the partisans of either side ; the court striving to strike a balance between the two, and frequently rejecting both. Conflicts on matters of experience and opinion in courts of law, are dangerous to the reputation of science, and inimical to every principle of justice. Juries as a rule, from their want of knowledge of such subjects, are unable to distinguish between that which is sound, and that which is worthless, as a consequence their verdicts are irregular and uncertain, and justice suffers. The whole subject of insanity, both in civil and criminal cases, needs revision, and with revision must disappear many of the axioms which have hitherto guided judges.

I have discharged my task ; I have endeavoured to show that the opinions of the law on the subject are not founded on fact, that, as a consequence, justice becomes uncertain and halting in its course, and that some amendment is urgently required if we wish to maintain the majesty of the law as a terror to evil-doers, and the protector of the innocent.

I have intruded myself on the Department in no spirit of cavil, but from a grave sense of the importance of the subject, and the need there is for inquiry ; as such I commend it to your consideration.

